IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

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Pratap Singh. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 4551/2004

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Date of Order: April 18, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr.Sangeet Lodha, for the petitioner.
Mr.B.L. Tiwari, Deputy Government Advocate, for respondents.

BY THE COURT:

By the instant writ petition, the petitioner seeks a direction to the respondents to count the services rendered by him with the respondents w.e.f. 12-10-1972 to 30-6-1979 for the purpose of computing the qualifying service for pension and retiral benefit and if there was any break in service, the same may be condoned with all consequential benefits.

The facts and circumstances giving rise to the instant writ petition are that during Indo-Pak War 1971, the petitioner migrated to India. The Inspector of School, Barmer, vide Office Order dated 6-10-1992, in pursuance of the order passed by the District Collector, Barmer dated 5-10-1972, appointed the petitioner and several other displaced persons in the

Government Service and gave him posting at Balewa, district Barmer vide Annx.2 dated 6-10-1972 and the name of the petitioner finds place at Serial No.15 in the order Annx.2. The petitioner was appointed on the post of a teacher. Subsequently, the petitioner was transferred to the Primary School Refugees' Camp, Bhojariya by the order dated 20-2-1976, where he joined the duty on 26-2-1976 vide Annx.3. By the order Annx. 4 DATED 4-6-1979, the State Government decided to settle the refugees permanently and, therefore, the services of the petitioner were terminated w.e.f. 30-6-1979. The petitioner was again appointed on the post of teacher vide order dated 16-2-1981 and posted to Gohadkatala in pursuance of the order passed by the Director, Primary and Secondary Education, Rajasthan, Bikaner dated 17.12.1980 and since then the petitioner has been continuing in service with the respondent-State on the post of teacher and he was superannuated on 30-4-1995. The services of the petitioner were terminated on 30-6-1979 vide EX.4 and thereafter he was allowed to continue in service vide Annx.5.

A reply to the writ petition has been filed by the respondents stating therein that the petitioner migrated to India during Indo-Pak War 1971 and the Rehabilitation Department, in order to settle such migrated persons, provided them the work. The petitioner rendered the services with the respondents

from 12-10-1972 to 28-2-1974 and again from 26-2-1976 to 30.6.1979 at different places on the post of teacher. However, subsequently he was appointed on 16-2-1981 and rendered his services in the Education Department. The respondents came with the case that since the earlier service rendered by the petitioner was less than five years, therefore, the break in service cannot be condoned in view of rule 212 of the Rajasthan Services Rules, 1951 (for short, "the R.S.R. 1951" hereinafter) corresponding to rule 27 of the Rajasthan Service (Pension) Rules, 1996 (for short, "the Pension Rules, 1996" hereinafter).

Rule 212 of R.S.R. 1951 pertains to Condonation of Interruptions and provides that upon such conditions as may think fit in each case to impose, the Government may condone interruption in service of Government servant. This rule does not contemplate that for such condition that the Government servant should have at least five years of service for condonation of interruption or break of service. The requirement of having five years' service has been pressed into service on the basis of the Government of Rajasthan's decision, which provides that the Government have delegated full powers to condone the interruption in service either between two spells of permanent service or between permanent/temporary or two spells of temporary services, caused on account of resignation, to the Administrative Department of the Government, subject to the

following conditions:-

(i)The interruption should have been caused by reasons beyond the control of the Government servant concerned,

(ii)Service preceding the interruption should not be less than 5 years duration and in cases where there are two or more interruptions the total service pensionary benefits in respect of which will be lost if the interruptions are not condoned, should not be less than five years; and

(iii)The interruption should not be more than one year's duration. In case where there are two or more interruptions, the total of the periods of all interruptions that are condoned should not exceed one year.

In the instant case, the interruption has not been caused on account of resignation. It is not the case of the respondents that the petitioner ever resigned; on the contrary, the order Annx.4 clearly shows that the services of the petitioner were terminated vide Annx.4 on the ground that the Government had decided to settle the refugees permanently and as such, interruption has been caused by the reason beyond the control of the petitioner. Thus, the case of the petitioner deserves to be considered for condonation of the interruption in service. Undisputedly, the petitioner rendered the service with the respondents from 22-12-1972 to 28-2-1974 and 26-2-1976 to 30-6-1979 and thereafter he continued in service with effect from 16-2-1981 till the date of his superannuation and, therefore, the period between 1-3-1974 to 25-2-1976 and

thereafter from 1-7-1979 to 15-2-1981 deserve to be condoned and be counted for the purpose of computation of pension and retiral benefits.

In this view of the matter, the writ petition is allowed and the respondents are directed to condone the interruption in the service of the petitioner for the period from 1-3-1974 to 25-2-1976 and -7-1979 to 15-2-1981 and considering the continuity of services of the petitioner, the respondents are directed to make computation of the qualifying period of service and make fresh computation of pension and other retiral benefits. This exercise be done within three months. There shall be no order as to costs.

(H.R. PANWAR), J.

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